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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
-----x

3 UNITED STATES OF AMERICA,

4 v.

20-cr-330 (AJN)

5 GHISLAINE MAXWELL,

6 Defendant.

Hearing

7 -----x

8 New York, N.Y.  
9 November 23, 2021  
9:40 a.m.

10 Before:

11 HON. ALISON J. NATHAN

12 District Judge

13 APPEARANCES

14 DAMIAN WILLIAMS

15 United States Attorney for the  
Southern District of New York

16 BY: MAURENE COMEY

ALISON MOE

17 LARA POMERANTZ

ANDREW ROHRBACH

18 Assistant United States Attorneys

19 HADDON MORGAN AND FOREMAN

Attorneys for Defendant

20 BY: JEFFREY S. PAGLIUCA

CHRISTIAN R. EVERDELL

21 LAURA A. MENNINGER

-and-

22 BOBBI C. STERNHEIM

Attorney for Defendant

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1 (Case called)

2 THE CLERK: Counsel, please state your name for the  
3 record, starting with the government.

4 MS. COMEY: Good morning, your Honor. Maureen Comey,  
5 Alison Moe, Andrew Rohrbach, and Lara Pomerantz for the  
6 government.

7 THE COURT: Good morning, everyone.

8 MS. STERNHEIM: Good morning. Bobbi C. Sternheim,  
9 Jeffrey Pagliuca, Christian Everdell, Lara Menninger for  
10 Ghislaine Maxwell, who is present at counsel table.

11 THE COURT: Good morning, everyone.

12 MR. PAGLIUCA: Good morning, your Honor.

13 THE COURT: Please be seated.

14 All right, we are here for a final pretrial conference  
15 in this matter, jury selection to be completed first thing on  
16 Monday morning, the 29th. I did note, counsel, after we had  
17 the last process, at the recommendation of the jury department,  
18 we have kept the unexcused jurors on -- the unused jurors at  
19 this point on call in case we need them, and once we have our  
20 jury finally selected on the 29th, the jury department will  
21 excuse the remaining jurors. That was one note I wanted to  
22 make.

23 For purposes of today's conference, there are a few --  
24 I have tried to give written guidance on as much as I could on  
25 the outstanding issues. There are a few remaining issues that

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1 I got supplemental briefing on to discuss. The motion in  
2 limine 7 of the defense, which is Government Exhibit 52, I got  
3 supplemental briefing on that; supplemental briefing on a few  
4 exemplars of co-conspirator statements; the remaining disclosed  
5 defense experts perhaps, so we'll discuss that. I have a few  
6 other things just to tick off the list, and go over logistics  
7 for Monday, and take your questions or hear your issues.

8 Ms. Comey, anything before we get underway?

9 MS. COMEY: Yes, your Honor. We do have a few issues  
10 to raise. The first is that unfortunately I do think we will  
11 need to ask for a briefing schedule to preclude  
12 cross-examination on certain topics of government witnesses.  
13 On Friday afternoon, the government conferred with defense  
14 counsel. We presented about a dozen topics that we believe are  
15 clearly improper topics for cross-examination. Yesterday  
16 defense counsel told us that they're not in a position to tell  
17 us that they will not cross on any of those topics. Because  
18 there are many of them and because they include things like  
19 criminal convictions that are beyond the scope of 609 and other  
20 personal information that might either identify anonymized  
21 witnesses or embarrass witnesses, we would ask to be able to  
22 submit briefing rather than raise those issues on the public  
23 record.

24 THE COURT: You can, but not until you have further  
25 discussion and narrow disputes, because that's going to happen.

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1 MS. COMEY: Your Honor, I can assure you we've  
2 attempted to. We raised issues that we thought are clearly not  
3 proper ground for cross-examination, like arrests as a juvenile  
4 for curfew violations, misdemeanor convictions that are more  
5 than ten years old, things that have nothing do with  
6 credibility, and the defense told us that they cannot assure us  
7 that they will not raise those issues on cross. We obviously  
8 need a pretrial ruling so that we know whether we have to raise  
9 those things on direct to draw the sting.

10 MR. PAGLIUCA: Your Honor, this is not a surprise to  
11 me that this is being raised, but this is a surprising issue, I  
12 think, to be raised. The list, laundry list of things that the  
13 government wants to talk about include things that are clearly  
14 within the rules, and --

15 THE COURT: I don't want a speech. What I want, it  
16 sounds like they're saying there are things that are clearly  
17 outside of the rules, in their view. And you say there are  
18 things that are clearly within the rules. You'll have a  
19 mature, reasonable discussion, and come to some agreement where  
20 agreement can be had. When you have disputes that are good  
21 faith and reasonable and based on available interpretations of  
22 the law, you'll submit to me in writing and I'll be happy to  
23 resolve it.

24 MR. PAGLIUCA: That's totally fine, your Honor. I  
25 guess the problem is -- and this is where we're going to end

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1 up, which is why I'm telling you this now -- we can't predict  
2 what people are going to say on either direct or  
3 cross-examination. And of course we will follow the rules.  
4 But here's an example: If someone were to say on direct  
5 examination, "I've never been in trouble in my entire life,"  
6 well, then that opens up the whole panoply of what is or is not  
7 permissible under Rule 609.

8 And so that's where we end up here. And I think,  
9 frankly, these are not issues that need to be briefed. These  
10 are issues that simply come up during trial, and if someone  
11 does something that one side or the other thinks is not  
12 appropriate, there's an objection and it's resolved. I can  
13 assure you that we are not going to do anything that is outside  
14 of the rules, and if we think it's even close, we would of  
15 course approach and address the issue with the Court.

16 If the government wants, I am happy to confer more  
17 about this. If the government wants to brief it, they can.  
18 But I think we end up in that place, which is, these are  
19 trial-time decisions.

20 THE COURT: That may be true, and I suspect if you  
21 have a conversation where the government says, you can't raise  
22 under the rule a juvenile conviction for -- what was it?

23 MS. COMEY: A curfew violation, your Honor.

24 THE COURT: -- a curfew violation, and you say, well,  
25 of course it could be that they say, I've never been in trouble

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1 in my life, I think you can come to point of agreement, can't  
2 you?

3 MS. COMEY: Yes, your Honor. Indeed we told the  
4 defense that we by no means mean to bind the defense against  
5 raising an issue that comes up during direct. We just wanted  
6 to know ex ante as things stand, do they have a good-faith  
7 basis to believe that there's a grounds for cross-examination  
8 along those topics.

9 THE COURT: It sounds like, I bet, this conversation  
10 could happen without me and everybody else in this room. But  
11 I'm glad to be here for you.

12 MS. COMEY: Thank you, your Honor.

13 MR. PAGLIUCA: Thank you, your Honor. Thank you.

14 THE COURT: What's next?

15 MS. COMEY: Your Honor, the other issue was, we've  
16 become aware recently of a number of subpoenas that the defense  
17 has served on witnesses. There's one in particular that we  
18 wanted raise at this juncture, which is, the defense has served  
19 the attorney who currently represents Minor Victim 4 with a  
20 subpoena, seeking his testimony at this trial. We've attempted  
21 to confer on this issue because the government has no idea what  
22 admissible testimony that attorney could possibly offer at this  
23 trial that would not be covered by attorney-client privilege.  
24 We would move to preclude it, but we cannot fathom what the  
25 testimony would be. And so we're raising it with your Honor

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1 because of the obvious issue that would arise with  
2 attorney-client privilege and with Minor Victim 4's right to  
3 representation of counsel.

4 MR. PAGLIUCA: Well, first, your Honor, I don't think  
5 that it's appropriate for me to have to discuss defense  
6 strategy in this context. However --

7 THE COURT: That's fine. There will be no -- without  
8 briefing, you will not call an attorney for a witness, period.  
9 I'm happy to see briefing, but until that happens, you won't.

10 MR. PAGLIUCA: That's fine, your Honor.

11 THE COURT: OK.

12 MS. COMEY: Thank you, your Honor.

13 We had one other question for your Honor, which is  
14 whether the Court intends to, in its preliminary instruction,  
15 inform the jury that certain witnesses will be testifying under  
16 pseudonyms. We wanted to know that so that we understand how  
17 to approach that issue in our opening statement.

18 THE COURT: I think we have a pending proposal, with  
19 the two sides having slightly different views as to what  
20 language to use for those instructions. I haven't dealt with  
21 that yet, but I will. And then I guess the second question  
22 you're asking is, will I include that in my preliminary  
23 instructions as opposed to at the time the first witness is  
24 called. It should come before opening, I presume, because  
25 you'll refer to witnesses pursuant to pseudonyms during

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1 opening.

2 MS. COMEY: Precisely, your Honor.

3 THE COURT: OK.

4 Defense, any objection to me including, in pre-opening  
5 preliminary instructions, what I determine is an appropriate  
6 instruction regarding witnesses testifying under pseudonyms?

7 MS. STERNHEIM: No.

8 THE COURT: Thank you.

9 MS. COMEY: Thank you, your Honor. There was just one  
10 more issue that I believe Ms. Moe was going to address.

11 THE COURT: Thank you. Ms. Moe.

12 MS. MOE: Thank you, your Honor. I'm going to bring  
13 to the Court's attention an issue that came to our attention  
14 regarding prospective Juror No. 93. We learned, following voir  
15 dire, based on publicly available information, that that  
16 prospective juror is an attorney at a financial institution.  
17 At trial, there will be a witness from that financial  
18 institution. He is more than a records custodian in the sense  
19 that he is an executive director at that financial institution.  
20 And he'll be talking about certain financial transactions.

21 During our meetings with this witness, an attorney for  
22 the financial institution had been present along with outside  
23 counsel for the financial institution.

24 So we want to just bring that to the Court's  
25 attention. We flagged that for the defense as well.



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1 THE COURT: What do you propose?

2 MS. MOE: Your Honor, I think at a minimum we propose  
3 some additional follow-up guess for the juror about her role,  
4 whether she interfaces with folks dealing with compliance,  
5 which is within the scope of what this witness does, whether  
6 there would be any issues about hearing testimony about the  
7 financial institution where she works.

8 We have not flagged for our witness that there is a  
9 juror, of course, who works with the institution, so it's hard  
10 for us to gauge whether they may have overlapped or whether  
11 they would recognize one another in the courtroom. So I  
12 recognize it would be difficult to probe this issue without  
13 creating an issue, but we think at a minimum a question about  
14 sort of her role and any issues about being fair or discomfort  
15 about witnesses who are testifying from the financial  
16 institution might address this issue.

17 THE COURT: Who will I hear from?

18 MS. STERNHEIM: You'll hear from me, Judge.

19 I think it is a little late. The publicly available  
20 information would have revealed that there are other people who  
21 are in that same institution or have been affiliated with that  
22 institution, some of which were excused, and at least one that  
23 is still here. The government can exercise a challenge if it  
24 wishes. But I think it's unnecessary. And it flags something  
25 inappropriately at this stage of the game. It will highlight

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1 something, and this witness is technically, I believe, a  
2 records custodian. He may be of a higher level than your  
3 standard records custodian, but his testimony is sort of  
4 ancillary to the charges in this indictment.

5 THE COURT: All right.

6 The purpose of me asking the parties to submit a list  
7 of entities or addresses that may be mentioned during trial was  
8 to capture this sort of issue. It sounds like the government  
9 failed to include a financial institution that will be  
10 mentioned during trial.

11 I agree. It's too late to go back and redo that,  
12 having failed to do so. So I think if you think it's an issue,  
13 it's a peremptory.

14 What else?

15 MS. COMEY: No other issues, your Honor, other than  
16 the outstanding ones your Honor outlined.

17 THE COURT: OK. Any -- go ahead.

18 MR. PAGLIUCA: Yes.

19 Your Honor, I wanted to talk a little bit about use of  
20 impeachment material during trial. I have a concern -- well,  
21 what I am proposing is that if we are going to be either  
22 impeaching or refreshing recollection of a particular witness,  
23 that we be able to do it electronically. I think that that  
24 would be fine, and that's typically how we would do this. The  
25 problem with using impeachment material during the course of

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1 this trial in paper format is that there's just too much paper  
2 involved. And the plan would be, if we're going to be  
3 impeaching the witness, you know, on an inconsistent statement  
4 or something else, that we would simply display that  
5 electronically to the Court, counsel, and here at the podium,  
6 and the witness, do the impeachment, and then take it down.  
7 These would not be things that would be shown to the jurors.  
8 But I want to make sure that that's an acceptable process to  
9 the Court.

10 THE COURT: There are times when the witness will want  
11 to see the full document, so you'll have those available should  
12 they ask for them or need them. But it's certainly consistent  
13 with standard practice to show the document electronically,  
14 and, again, say, you want to see more, either the whole  
15 document in paper or the page before or after, you'll  
16 accommodate that. But otherwise, I don't see an issue.

17 MS. MOE: Yes, your Honor. As the Court may have  
18 recalled, when the parties submitted a joint proposal with  
19 respect to issues regarding witness anonymity, one of the joint  
20 proposals was that exhibits under seal which contain  
21 identifying information or victims or other relative witnesses  
22 would be handled in paper copies with binders for the jurors?

23 THE COURT: Because the screens are visible.

24 MS. MOE: Exactly, your Honor. And so to the extent  
25 any of those exhibits fall within that category, our view is

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1 that those should be treated similarly. To the extent there's  
2 an exhibit that can otherwise be shown electronically, like  
3 other exhibits that can be shown electronically, of course we  
4 have no objection to that. But for documents that contain  
5 identifying information, given the location of the jurors'  
6 screens in this courtroom and how they would be visible to  
7 members of the public, we would request that they be treated  
8 like other sealed exhibits.

9 MR. PAGLIUCA: These are not exhibits, your Honor, so  
10 they won't be admitted into evidence.

11 THE COURT: Same issue, right?

12 MR. PAGLIUCA: Yes.

13 THE COURT: Whatever they are, we're protecting  
14 anonymity, which is my order. Screens are visible. Should  
15 that be an issue with respect to anything you want to show for  
16 refreshing recollection, why not show that on -- you'll show  
17 that on paper.

18 MR. PAGLIUCA: It's an unwieldy and impossible project  
19 here, your Honor.

20 THE COURT: To use paper?

21 MR. PAGLIUCA: To use --

22 THE COURT: The way trials have been done for a very  
23 long time?

24 MR. PAGLIUCA: It is likely there will be -- there are  
25 thousands of pages of potential material that will be at issue.

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1 And in order to accommodate paper, there will be, I think,  
2 substantial delays during the process. It will require handing  
3 out of copies.

4 THE COURT: Get to the solution. So the problem we  
5 know is that I have ordered anonymity with respect to some  
6 witnesses. The second portion of the problem we know is that  
7 the way the courtroom is constructed, screens are available  
8 that may show names or identifying information, which I'm not  
9 permitting to be made public. What's the solution?

10 MR. PAGLIUCA: Well, they won't be shown to the  
11 jurors, so that's not an issue.

12 THE COURT: We're not keeping the names from the  
13 jurors, so that's certainly not an issue.

14 MR. PAGLIUCA: Impeachment information won't be on the  
15 screen to the jurors because it's not an admitted exhibit. OK.

16 THE COURT: Right. I think the issue is the screens  
17 on counsel's table.

18 MR. PAGLIUCA: I don't believe -- and I was trying to  
19 see this from the back of the courtroom -- I don't believe that  
20 you can see, you know, a paper document from the back of the  
21 courtroom when it's up on the screen.

22 Certainly, we could turn off these screens over here,  
23 or, alternatively, I can give the government paper copies and  
24 the government can look at paper copies. So that takes care of  
25 the problem. And then that way, we don't have to be

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1 displaying -- we don't have to be approaching the witness and  
2 we can move seamlessly through this.

3 These are all documents that are in the government'  
4 possession to begin with, your Honor. These are not things  
5 that are unknown at this point.

6 THE COURT: Again, that seems off topic. But -- so  
7 it's manageable to give the government paper.

8 MR. PAGLIUCA: It should be.

9 THE COURT: Any reason you can't -- how about this.  
10 Prepare it as a binder for potential use, even if it's not the  
11 full document, but anything that you might use -- that you  
12 think you might use. As you know, it's a known quantity. You  
13 have it in a binder and you could direct them to turn to it.  
14 If it turns out there's something that you do want to show that  
15 you didn't put in the binder, we'll deal with that and you'll  
16 be able to show it, either by turning off the counsel screens  
17 and showing it on the monitor or we'll hand up paper at that  
18 point.

19 MR. PAGLIUCA: I think there is going to be a real  
20 problem, your Honor, to do it like that. It just --

21 THE COURT: Help me understand this as a practical  
22 matter. You will have your outline for your cross, and you're  
23 going to know enough to tell your paralegal, Put up document  
24 number so-and-so, page 7. And that's how your paralegal is  
25 going to pull that up and put it on the screen, right? Why

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1 can't you just have put that in a binder, a paper binder, in  
2 advance? And as I said, if there's something that comes up or  
3 you realize you neglected to put it in, we could deal with  
4 that. But by and large, you're directing them to a tab in a  
5 binder, just like you would direct your paralegal to show a  
6 particular document on the screen. What am I missing?

7 MR. PAGLIUCA: Well, we can try that, your Honor. And  
8 we'll see how it goes. I mean, we'll be prepared to do it both  
9 ways.

10 THE COURT: And I assure you, if for some reason  
11 there's something you want to show that's not in the binder, we  
12 will work that out and you won't be precluded from showing it.  
13 But to the extent you've prepared your cross outline and you  
14 know what you're going to ask about, just like you would call  
15 it up, just have that in a tabbed binder so they can turn to  
16 it.

17 And, again, to be completely clear, should there be  
18 anything you need to do that wasn't in the binder, you'll be  
19 able to do it and we'll either hand up paper in those few  
20 instances or we'll turn off the table monitors and show it on  
21 the screen.

22 MR. PAGLIUCA: OK, your Honor. Thank you.

23 THE COURT: Thank you.

24 What else?

25 No? OK.

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1           So defense seeks to preclude, in motion in limine 7,  
2       Government Exhibit 52. I'm not going to preclude, but I do  
3       think this needs to play out at trial. I need to hear the  
4       witness testimony and I'll allow voir dire, given factually  
5       what I understand to be the issues surrounding this item, and  
6       as I understand it -- the witness is going to -- tell me if I  
7       have this wrong. The anticipated testimony, Ms. Comey -- this  
8       is for you, Ms. Comey -- the anticipated testimony is that not  
9       this exact book but a similar-looking book, characteristically  
10      similar, binding, pages, font, etc., was seen by this witness,  
11      and she can attempt to authenticate by describing the  
12      similarities between what is Government Exhibit 52 and what she  
13      saw. Is that the idea?

14           MS. MOE: That's correct, your Honor. Because this  
15      witness has not been informed about how that exhibit came into  
16      the government's possession, I just wanted to clarify one small  
17      thing, which is that this witness won't say that this isn't one  
18      of the -- you know, in particular, that because she recognizes  
19      it as one in a series, but doesn't know how it came to the  
20      government's possession, it's just identifying it in that way.

21           THE COURT: So your understanding is, by the time  
22      frame, this wouldn't have been the one that she saw, but she  
23      won't know that because you anticipate her testimony to be  
24      there were several versions of these and they are all the same.

25           MS. MOE: That's correct, your Honor.



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1 THE COURT: So I will allow -- I don't know if it's  
2 admissible. I think, from what I see, it's a close question.  
3 It's going to turn on the testimony. So I'll allow that  
4 testimony to take place. I'll allow voir dire. And then I'll  
5 make a ruling, depending on how that goes, as to whether it  
6 meets the threshold for admissibility, and the questions that  
7 have been raised go to weight. But as I sit here, I don't know  
8 until I hear that testimony.

9 I do think that the government needs to make it  
10 available for inspection to the defense, and so you'll work out  
11 the logistics of that pretrial. To the extent that they want a  
12 forensic expert to look at it, a document forensic expert to  
13 look at it, you'll work out the logistics to make it available.  
14 OK?

15 MS. MOE: Yes, your Honor.

16 THE COURT: Any questions about that?

17 MR. PAGLIUCA: No, your Honor, other than one of my  
18 requests was that the actual document be here at trial and not  
19 a photocopy of one page.

20 MS. MOE: Yes, your Honor. The actual exhibit will be  
21 here in the courtroom at trial. And we have already made that  
22 exhibit available for the defense for inspection. They have  
23 personally inspected it, I believe that was on November 1st.

24 THE COURT: Great. I'm happy to hear that. And not  
25 just the page but the whole book.

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1 MS. MOE: That's correct, your Honor. We made it  
2 available for inspection this summer. We notified the defense  
3 in a letter that it was available for inspection. The defense  
4 asked for an inspection the week before our conference on  
5 November 1st. I made it available for inspection that day.  
6 They personally inspected it. We're happy to continue to make  
7 that available for inspection to the defense.

8 THE COURT: I'm very happy to hear that. Thank you.  
9 I appreciate that. And I think that takes care of that for  
10 now.

11 I guess one question: I think, given the uncertainty  
12 as to admission, the government should not mention it in its  
13 opening.

14 MS. MOE: Of course, your Honor. Thank you.

15 THE COURT: Anything before we move on?

16 MR. PAGLIUCA: No, your Honor. Thank you.

17 THE COURT: So next is the admissibility of  
18 co-conspirator statements. I do appreciate the efforts to come  
19 to reasonable agreement, of course, with the defense preserving  
20 objections as to ultimate admissibility. Based on the law, of  
21 course the government has to make the showing that's required  
22 during the course of the trial.

23 There are two statements that are exemplars that  
24 remain in issue, and I think, starting with the second one  
25 first: so the second one, it seems to me, is not being offered

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1 for the truth, that it is being, as I understand it, being  
2 offered for the effect on the listener, and so really there  
3 is -- it's a potential relevance issue and not a hearsay issue.  
4 I think this needs to play out at trial, but tell me if anybody  
5 disagrees with that.

6 MS. COMEY: We agree, your Honor.

7 MR. PAGLIUCA: Agreed.

8 THE COURT: And then the other one, the government is  
9 seeking admission pursuant to 801(d)(2)(E), and in question is  
10 whether the statement was made during the course of and in  
11 furtherance of that conspiracy.

12 I don't think I have enough to answer that before me.  
13 So I can either hear more now or let it play out at trial.

14 MS. COMEY: I think it should play out at trial, your  
15 Honor.

16 MR. PAGLIUCA: Yes. I agree, your Honor.

17 THE COURT: Great. Thank you. All right. That takes  
18 care of that.

19 Next are the four additional individuals that the  
20 defense disclosed as potential experts. So we've got Kelso and  
21 Lopez, who, it strikes me, are primarily potentially fact  
22 witnesses and not expert witnesses, with the exception of that  
23 Kelso tes -- so I think first, let's see if we get agreement  
24 on: Lopez would be fact testimony, correct?

25 MR. ROHRBACH: That's the government's understanding,

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1 your Honor, although it's not clear from the expert notice  
2 whether they anticipate going beyond pure fact testimony.

3 MR. EVERDELL: Your Honor, at this point we anticipate  
4 him being a fact witness.

5 THE COURT: Summary and fact witness.

6 MS. MENNINGER: Yes.

7 MR. EVERDELL: I think.

8 THE COURT: Doesn't sound like expert to me, so I  
9 don't think there's anything to do on that now.

10 Kelso also seems largely anticipated to summarize data  
11 documents and photographs on electronic devices either as a  
12 fact witness or summary testimony under 1006. And except  
13 Kelso's testimony that may cross over into expert testimony is,  
14 I'm going to quote from the notice, "generally about computer  
15 forensic principles associated with the creation of document  
16 storage and retrieval of digital documents and photographs,  
17 including the limits to the information that can be gleaned  
18 from the metadata."

19 I don't think there's been a sufficient disclosure at  
20 this point pursuant to Rule 16. The disclosure doesn't say  
21 what Kelso's opinions actually are about, as to any of these  
22 topics, or provide any basis for those opinions. So certainly  
23 further disclosure would be necessary before I would allow  
24 expert testimony. Is that anticipated?

25 MS. MENNINGER: Your Honor, this is my witness. He

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1 would largely be in rebuttal to a government witness.  
2 Mr. Flatley was disclosed by the government for similar  
3 purposes to talk about the retrieval of metadata from some of  
4 the devices that were seized from Epstein's home. To the  
5 extent Mr. Flatley talks about the retrieval of metadata or  
6 what that metadata means, Mr. Kelso may then be a rebuttal  
7 witness, but we don't know yet from the government's disclosure  
8 exactly what documents Mr. Flatley intends to refer to. And so  
9 that's why there isn't more information about what Mr. Kelso  
10 might or might not say. Frankly, we think it would largely be  
11 factual. It may stray into areas about metadata if Mr. Flatley  
12 offers opinions along those grounds, and we think that it's not  
13 accurate. If that's true, we can provide an updated  
14 disclosure, once we've heard Mr. Flatley's testimony.

15 THE COURT: Mr. Rohrbach.

16 MR. ROHRBACH: Your Honor, the exhibits that  
17 Mr. Flatley is going to talk about are now marked as government  
18 exhibits, and the defense has Mr. Flatley's 3500 information as  
19 well as examples the government has pointed to where  
20 Mr. Flatley has offered similar testimony in other cases in  
21 this district and in the Eastern District. So I think the  
22 government has given ample notice about what Mr. Flatley will  
23 testify about.

24 But as a more general matter, to the extent that the  
25 defense provides supplemental notice at some point about

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1 whether they're going to cross the line from pure fact  
2 testimony to expert testimony, I think we can deal with it at  
3 that time.

4 THE COURT: OK. What I would just say is, if your  
5 expert, looking at the 3500 material and the disclosure, has  
6 different expert views, you need to notice those now. But to  
7 the extent it's something that comes out at trial, that  
8 couldn't have been anticipated, then you can notice down the  
9 road.

10 So just in terms of what, if your expert has testimony  
11 now that's different from what's anticipated in light of the  
12 government's notice and the marked exhibits and 3500 material,  
13 when would you like to provide additional notice?

14 MS. MENNINGER: Your Honor, some of the "marked  
15 exhibits" are a placeholder for an entire hard drive that has  
16 any number of documents on it. If the government is now  
17 representing they will only be referring to the documents that  
18 are separately marked and not to exhibits that say "hard drive  
19 58," "hard drive 85," "hard drive 96," we could do that, but  
20 they haven't made that representation.

21 THE COURT: Fair enough.

22 MR. ROHRBACH: Those drives are marked for  
23 identification for authentication purposes, but to the extent  
24 that the point is that Mr. Kelso is going to testify about  
25 general principles associated with the creation of documents

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1 and the extraction of metadata as his expert testimony,  
2 Mr. Flatley's views on those questions should be available  
3 through the 3500 material and through his other expert  
4 testimony, so there's really no need for any sort of further  
5 identification by the government of anything before Mr. Kelso  
6 should be able to let us know his views on those questions.

7 MS. MENNINGER: Your Honor, the 3500 material doesn't  
8 say Mr. Flatley is going to describe the extraction of user  
9 data this way. He's talked about the fact that he has observed  
10 the user data, but he hasn't talked about the methods that he's  
11 used it. It's not that type of 3500 material from the  
12 government. So I don't agree that we could tell from what they  
13 have provided thus far exactly what Mr. Flatley's testimony is  
14 going to be.

15 And frankly, they said Mr. Flatley was largely a fact  
16 witness as well. So if I'm understanding now that they're  
17 intending to offer something along the lines Mr. Kelso is, they  
18 didn't provide sufficient notice for Mr. Flatley's expertise in  
19 that area either.

20 THE COURT: Well, I have to go back and look at the  
21 notice. But are you using Flatley as an expert?

22 MR. ROHRBACH: We think Mr. Flatley is primarily a  
23 fact witness, but the line between a fact witness in a setting  
24 like this and someone testifying on the basis of their  
25 expertise is not well settled, and so we've given expert notice

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1 in an abundance of caution, and also identified for the defense  
2 four other cases in which Mr. Flatley has testified on a  
3 similar topic so they can see --

4 THE COURT: That includes his ex-- to the extent it  
5 crossed over into expert opinion about methodology, for  
6 example --

7 MR. ROHRBACH: If I may have a minute, your Honor.

8 Mr. Flatley is qualified as an expert in some of those  
9 four cases, which highlights the vagaries of this line, and it  
10 provides information about the bases of his opinion about these  
11 topics.

12 To the extent that there is an issue that is not  
13 raised, either in the government's expert notice or 3500, or in  
14 the similar exemplars we've given the testimony, that might be  
15 something that's outside the bounds of the government axe pert  
16 notice, depending on exactly what it is.

17 THE COURT: So I think what we need to do is, you have  
18 your expert look at the testimony that he's provided. If he's  
19 got some differing expert opinion as to forensic principles or  
20 creation of documents or storage and retrieval of digital  
21 documents, or what information can be gleaned from metadata  
22 generally, I think you should notice those opinions. But  
23 absent that, we'll let it play out. OK.

24 MS. MENNINGER: Certainly, your Honor. And obviously  
25 if Mr. Flatley attempts to offer opinions during his testimony



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1 that are not disclosed, I will raise that with the Court at  
2 that time.

3 THE COURT: All right.

4 Just with respect to what you have as anticipated  
5 opinion about those subjects, when will you -- give me the date  
6 by which you'll tell me if your expert has different expert  
7 opinions to offer with respect to those areas.

8 MS. MENNINGER: This Saturday, your Honor?

9 THE COURT: All right.

10 MS. MENNINGER: And I don't -- I guess what I'm  
11 hearing is, the only opinions he may offer are those disclosed  
12 in other cases. They haven't disclosed an opinion from this  
13 case. So we will look at those other trial testimony, and any  
14 opinions in those testimony that our client -- our expert  
15 disagrees with we can provide them by this Saturday.

16 THE COURT: That sounds very reasonable to me. OK?

17 MR. ROHRBACH: Yes, your Honor. Although we know  
18 that, again, in addition to the other -- his testimony in other  
19 cases, we would point the defense expert to the 3500 material  
20 as well in this case and the government's exhibits.

21 THE COURT: Well, I mean, your notice should provide  
22 the opinions that he's going to offer. Does it?

23 It's not a scavenger hunt. You're required, as the  
24 first matter, to provide, pursuant to Rule 16, the opinions  
25 that he's going to offer. Have you done that?

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1 MR. ROHRBACH: Yes. The government believes that its  
2 notice, in combination with its 3500 materials and the cases  
3 it's pointed the defense to, should give the defense an  
4 understanding of Mr. Flatley's opinions, to the extent that  
5 they're expert opinions at all and not just fact opinions.

6 THE COURT: Well --

7 MR. ROHRBACH: Your Honor, my point is that  
8 Ms. Menninger says that she would have her expert review  
9 Mr. Flatley's testimony in other cases to see if there are  
10 opinions he disagreed with, and I just wanted to clarify that  
11 the defense expert should review the material the government  
12 has provided them.

13 THE COURT: That's fine, but it's your notice that  
14 sets up the opinions that your expert is offering.

15 MR. ROHRBACH: Yes, your Honor.

16 THE COURT: So what they should do is look at the  
17 notice, and if their expert has different views than what's in  
18 the notice, they should provide those views.

19 MR. ROHRBACH: Yes, your Honor.

20 THE COURT: If your notice is insufficient under Rule  
21 16 to tell us now what opinions your expert is going to  
22 provide, then you may have problems down the road. But I'm not  
23 going to have them held to a different standard than what the  
24 government has done here.

25 MR. ROHRBACH: Of course, your Honor.

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1 THE COURT: So, Ms. Menninger, with respect to  
2 Saturday, if there's anything in the notice that's suggested  
3 that your expert has different expert opinions on, please  
4 provide notice. Otherwise we'll see how it plays out.

5 MS. MENNINGER: Of course. Thank you, your Honor.

6 THE COURT: And then LaPorte and Naso, I don't have  
7 any sense, based on the disclosures, what evidence this will go  
8 to, and the defense says that's because they don't know what  
9 evidence the government will produce. What documents do you  
10 imagine you would have these experts analyze?

11 MR. PAGLIUCA: I think it's unlikely that they will  
12 testify, your Honor. The only document that was potentially at  
13 issue relates to Accuser No. 2. And I doubt that that -- I  
14 doubt that that's going to become an issue during trial. We  
15 endorsed them just out of an abundance of caution, and I don't  
16 really see it playing out. But I think if it -- if it comes  
17 up, if it becomes an issue, certainly I'll give as much notice  
18 as I can. But I don't really think they're going to be  
19 testifying at trial.

20 THE COURT: Good enough for me.

21 Mr. Rohrbach.

22 MR. ROHRBACH: I'd like to say it's good enough, your  
23 Honor. The concern is that if the defense decides mid trial  
24 that they would like to call these experts, it's going to  
25 create a difficult situation for the government to file the

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1 appropriate *Daubert* motion, identify responsive experts if  
2 necessary. And so the government asks that the Court preclude  
3 the defense experts at this time unless they give at least more  
4 specific notice about what they might testify to.

5 THE COURT: Well, they are precluded without more  
6 specific notice. That's true.

7 MR. ROHRBACH: OK. Then that's fine for the  
8 government, your Honor.

9 THE COURT: Yes. I mean, plainly, Rule 16 hasn't been  
10 met at this stage, and the representation is, they're not  
11 anticipating anything coming up. If something comes up, they  
12 would have to first provide sufficient notice in order for us  
13 to be able to resolve this. So it can't being is that could  
14 have been anticipated at this point. OK?

15 MR. PAGLIUCA: Yes. Totally understood, your Honor.

16 THE COURT: OK. Thank you.

17 All right. Next thing on my checklist, the limiting  
18 instructions related to witness 3 that I proposed. Who's  
19 taking this one?

20 MR. ROHRBACH: I am, your Honor.

21 THE COURT: So Mr. Rohrbach, you propose -- so I  
22 suggested, "However, you may not convict the defendant on the  
23 basis of the testimony regarding the sexual conduct between  
24 this witness and Mr. Epstein." You agree that's a correct  
25 statement of the law, yes?

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1 MR. ROHRBACH: I apologize, your Honor. I'm just  
2 trying to pull find that. This is for the --

3 THE COURT: For witness 3.

4 MR. ROHRBACH: For witness 3. Yes, your Honor, we  
5 agree that's a correct statement of the law.

6 THE COURT: But you want to add "solely."

7 MR. ROHRBACH: Yes. The government thinks that that  
8 clarification --

9 THE COURT: Let me ask you this. So if you add  
10 "solely," then, to my ear, it would mean that you can convict  
11 the defendant on the basis of the testimony of witness 3  
12 regarding the sexual conduct between this witness and  
13 Mr. Epstein, and other evidence regarding the sexual conduct  
14 between this witness and Mr. Epstein. Is that a correct  
15 statement of law?

16 MR. ROHRBACH: Yes, your Honor. Insofar as the Court  
17 has ruled that evidence related to witness 3 is direct evidence  
18 of the offense, if that is offered in combination with other  
19 evidence in the case that goes --

20 THE COURT: No, I think maybe you misunderstood my  
21 question. The government has said that the sexual conduct  
22 between Mr. Epstein and this witness took place over all  
23 relevant ages of consent. Correct?

24 MR. ROHRBACH: Yes, your Honor.

25 THE COURT: So the defendant can't be convicted based

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1 on the sexual conduct between this witness and Mr. Epstein.

2 Correct?

3 MR. ROHRBACH: Yes.

4 THE COURT: My question is, I think if you add  
5 "solely," this is what I hear: that the defendant can be  
6 convicted based on this witness's testimony regarding the  
7 sexual conduct between Mr. Epstein and this witness, and other  
8 evidence regarding the sexual conduct between this witness and  
9 Mr. Epstein. Is that a correct statement?

10 MR. ROHRBACH: I see your Honor's point. Yes, that  
11 would be a correct statement.

12 THE COURT: That would be in, in--

13 MR. ROHRBACH: That would be incorrect.

14 THE COURT: That would be wrong. As a matter of law.

15 MR. ROHRBACH: Yes.

16 THE COURT: And that doesn't solely give it that  
17 meaning, that potential meaning?

18 MR. ROHRBACH: I see your Honor's point that if  
19 "solely" is read to modify the sexual-conduct point, then that  
20 creates a -- it becomes amenable to that reading. The  
21 government's point is that --

22 THE COURT: And should the jury be instructed that  
23 way, that would be, in my mind, reversible error.

24 MR. ROHRBACH: That would be an incorrect statement of  
25 law, yes, your Honor.

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1 THE COURT: So we won't add "solely," because we don't  
2 want to wrongly instruct the jury about the law. So we'll keep  
3 that one as it is.

4 I need to think about the other one. In my mind, this  
5 is an issue that pertains -- I understand there's a witness  
6 where the only sexual conduct took place in New Mexico, and I  
7 had understood previously that that witness was above the age  
8 of consent in New Mexico, but that the government was offering  
9 that evidence as enticement to engage in illegal sexual conduct  
10 in New York. And that's what I was trying to capture in the  
11 instruction, so that that evidence could be relevant, the jury  
12 could see that evidence as relevant to the enticement to  
13 illegal sexual activity as defined under New York law, which is  
14 the only way that the government has charged this case, other  
15 than the trafficking count -- well, including the trafficking  
16 count, yes.

17 And that's what I was trying to capture. And I'll  
18 consider the alterations you're suggesting. What we can't do  
19 is infuse the instruction with the government's case and  
20 arguments. The point here is just to make clear what the  
21 jurors can't do and then, to the extent they otherwise deem the  
22 evidence relevant, they can consider it and we'll give them the  
23 charge at the end of the day. But I'll consider the  
24 suggestions. I haven't -- just haven't had time.

25 Anything on that?

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1 MR. EVERDELL: Yes, your Honor. I mean, it's the  
2 defense's position that the Court's instruction is a correct  
3 statement of law. It's concise, it's clear, and will clarify  
4 the issues for the jurors as opposed to confuse the issues. I  
5 think the government's instruction is exactly the opposite. It  
6 is cumbersome, it is difficult to follow, and it will confuse  
7 rather than to clarify.

8 And I will just point out, I think your Honor  
9 identified the correct example, which is Accuser 2, which is  
10 alleged events that took place in New Mexico when she was above  
11 the age of consent for those acts in New Mexico.

12 And so this illustrates the problem of trying to prove  
13 a conspiracy where the illegal sexual activity is a violation  
14 of New York law with acts that took place in other  
15 jurisdictions which were legal and have nothing to do with New  
16 York law.

17 So as I think you've discussed before, your Honor, if  
18 the witness is going to testify to these events that took place  
19 in New Mexico, even though they're legal under New York law --  
20 there's no issue there -- they're going to --

21 THE COURT: Not under New York law.

22 MR. EVERDELL: Under New Mexico law. I'm sorry. I  
23 misspoke. Under New Mexico law.

24 THE COURT: Right.

25 MR. EVERDELL: They're going to assume that the



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1 purpose of this testimony is that these are illegal acts that  
2 they're talking about, and unless they're instructed otherwise  
3 by the Court, they may convict Ms. Maxwell on an improper  
4 basis, which is that this witness's testimony is talking about  
5 illegal sexual activity, as that's charged in the indictment.  
6 So there has to be a clarification on this point.

7 And I just would note, your Honor, the reason why  
8 we're here in this position is because the government has  
9 chosen to add Accuser 2, Accuser 3, people who have nothing to  
10 do with violations of New York law, in this conspiracy, and if  
11 they're going to do that and you try to use that as evidence of  
12 a violation of New York law --

13 THE COURT: Well, the charge is enticement. And, in  
14 my mind, this witness is in a very different position than  
15 witness 3.

16 MR. EVERDELL: Yes.

17 THE COURT: But it's certainly relevant evidence to  
18 the enticement charge with respect to New York law. There's no  
19 doubt about that.

20 But I agree, we have to make sure that the jury  
21 understands, though it can be relevant evidence for that, if  
22 they want to take it into account for whatever they want to  
23 take it into account for, what they can't take it into account  
24 for is itself the New Mexico activity -- sexual activity as  
25 itself illegal conduct charged in the indictment.

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1 But it seems to me these witnesses are in very  
2 different postures, and therefore different risk of prejudice.  
3 But I propose an instruction that I think gets to the point.  
4 And it's a different instruction precisely for this reason,  
5 that that sexual conduct can be relevant evidence of the  
6 enticement charge to violate New York law. So I do think some  
7 charge with respect to that witness, some limiting instruction  
8 with respect to that witness, is necessary. I won't make it  
9 confusing, and I won't allow the government to just insert its  
10 theory into the charge. But I'll take a look to see if there  
11 is any additional clarification. That would be helpful.

12 MR. ROHRBACH: Just in response to Mr. Everdell's  
13 point, your Honor, the government is not prepared to concede  
14 today that the sexual activity that occurred in New Mexico was  
15 above the relevant age of consent. As we briefed in our  
16 letter, that's a complex question of New Mexico state law.

17 THE COURT: So, I mean, if there's a factual question  
18 that the government intends to put on, as to whether that was  
19 illegal sexual activity under New Mexico law, then certainly  
20 I'm not going to -- again, that's not how you charged it.  
21 That's not how you charged it here. Right? You haven't  
22 charged pursuant to New Mexico law. But if what the government  
23 is saying is, I shouldn't give that charge because in fact  
24 you're going to show that it was illegal sexual activity -- I'm  
25 not going to misinform the jury that it wasn't illegal under

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1 New Mexico law if that's something the government is going to  
2 show.

3 MR. ROHRBACH: Your Honor, we completely agree that  
4 our charging theory is just a violation of the New York statute  
5 and not the New Mexico statute, or any particular New Mexico  
6 statute. Our point is that it is not a straightforward  
7 question that any sexual activity that occurred in New Mexico  
8 was necessarily above New Mexico's own age of consent. So at  
9 least the legal accuracy of that has not been established at  
10 this point.

11 THE COURT: Will it be an issue in trial?

12 MR. ROHRBACH: No, your Honor, because the government  
13 is not planning to put on evidence aimed at meeting any  
14 particular New Mexico offense, since that's not the charges  
15 that we've established in this case. That's just a point in  
16 terms of the accuracy of the proposed jury instruction -- that  
17 is, whether the sexual conduct was legal or illegal within New  
18 Mexico.

19 THE COURT: So what I had said was, "I anticipate  
20 you'll hear testimony from the next witness about sexual  
21 conduct that she says she had with Mr. Epstein in New Mexico."  
22 And then I had suggested, because it's what I understood from  
23 the parties, "I instruct you that because the witness was over  
24 the age of consent in New Mexico at the relevant time period,  
25 the sexual conduct she says occurred with Mr. Epstein was not

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1 illegal sexual activity, as the government has charged in the  
2 indictment." So it sounds to me, from what you're saying, is  
3 that the first part of that sentence may be factually in  
4 dispute. But the key, I think, goes to the latter part of the  
5 sentence, which is that the sexual conduct she says occurred  
6 with Mr. Epstein was not illegal sexual activity as the  
7 government has charged in the indictment. You agree with that.

8 MR. ROHRBACH: That's correct, your Honor.

9 THE COURT: So let me work on this one, and I'll  
10 propose -- I mean, I'll put out a new proposal after I've had  
11 some time to absorb.

12 MR. ROHRBACH: If I may make just one other point,  
13 your Honor, related to this, which is that, given that we've  
14 charged this as a -- minor Victim 2 is only charged in the  
15 conspiracy counts of the indictment. And so whether or not  
16 events that took place in New Mexico constitute illegal sexual  
17 activity within the meaning of the Mann Act doesn't bear on  
18 whether there was an independent to engage -- sorry. It bears  
19 on whether there was an intent to engage in illegal sexual  
20 activity in New York but only insofar as that sexual activity  
21 in New Mexico would satisfy the New York definition of --

22 THE COURT: Yes.

23 MR. ROHRBACH: And so whether or not --

24 THE COURT: I understand. The only fear of confusion  
25 is if they think that you've established the illegal sexual

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1 activity by having put on evidence of the sexual conduct in New  
2 Mexico.

3 MR. ROHRBACH: Yes, your Honor. And we, for the  
4 reason --

5 THE COURT: I understand your point, which is whether  
6 or not it violated New Mexico law, that witness, in her  
7 telling, was under the age of consent in New York, and  
8 therefore it goes to the conspiracy to -- the Mann Act  
9 conspiracy count.

10 MR. ROHRBACH: Right, yes.

11 THE COURT: I get it.

12 I will absorb this information and propose -- I do  
13 think a charge is necessary, but it has to be correct, and it  
14 sounds like it may not be entirely correct as written. So I'll  
15 propose.

16 MR. EVERDELL: Your Honor, if I could just be heard  
17 briefly.

18 THE COURT: Sure.

19 MR. EVERDELL: On the point about not being illegal  
20 under New Mexico law, this is really an eleventh-hour issue the  
21 government is raising. They haven't charged it this way. I  
22 imagine if they thought this was really a violation of New York  
23 law there would be a substantive --

24 THE COURT: New Mexico law.

25 MR. EVERDELL: I'm sorry. I keep misstating, your

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1 Honor. -- New Mexico law, that we would have a substantive  
2 violation in addition for this witness. We don't. And in fact  
3 I believe the government, based on the case law they're  
4 citing, the issue they're raising is that there has to be force  
5 involved or coercion involved for this to be something illegal.  
6 And that's not how they charge it. That's never been an issue  
7 in this case. We've litigated that issue quite extensively.  
8 So I think it is a correct statement of law to say this is not  
9 illegal sexual activity under New Mexico law, and that's what  
10 the instruction should reflect to the jury.

11 THE COURT: I think the important point has to be  
12 captured in "as charged by the government and for purposes of  
13 establishing the elements that the jury has to consider." So I  
14 hear your point. I'm going to think about the best way to  
15 provide clarity to the jury so that they know what they can and  
16 what they can't do with this evidence.

17 MR. EVERDELL: Thank you, your Honor.

18 THE COURT: I'll do my best. And I'll hear from you  
19 after I re-propose.

20 Anything else on that?

21 MR. ROHRBACH: No. Thank you, your Honor.

22 THE COURT: Anything else, Mr. Everdell?

23 MR. EVERDELL: No, your Honor. Thank you.

24 THE COURT: All right. So next is just to go over,  
25 make sure we're all on the same page -- that's all I have for

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1 legal issues. The next is to make sure we're on the same page  
2 about logistics for Monday. So we'll be here, as you know.  
3 The jurors will be assembled in two different courtrooms, and  
4 they -- when they left, we gave them instructions as to where  
5 they should go. So we'll have -- and you've been provided  
6 that -- jurors in the two different courtrooms.

7 We'll meet here at 8:30, by the way.

8 So once we have all of the jurors assembled, we'll  
9 have the video feed, and I will say good morning to them and  
10 then say I'm going to ask two questions and if they have a  
11 "yes" response to either of the questions they should raise  
12 their hand. And as we discussed, the two questions are:

13 "(1) Since you were here for individual questioning by  
14 me, have you read, heard, seen, researched anything about the  
15 case or discussed the case with anybody? If yes, please raise  
16 your hand.

17 "(2) Do you feel for any reason that you could not be  
18 a fair and impartial juror in this case? If yes, please raise  
19 your hand."

20 If any jurors raise their hand, we'll bring them in  
21 one at a time and see what the issues are.

22 Once we get through that, then we'll have our pool,  
23 and your peremptories will be exercised on the first 40 jurors  
24 in ascending order. Any questions about that?

25 And we'll have the board and you'll do alternate

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1 strikes.

2 MS. COMEY: No questions, your Honor.

3 MS. STERNHEIM: No. Thank you.

4 THE COURT: OK.

5 I always ask at the final pretrial conference if there  
6 are any issues to discuss regarding exclusion of witnesses  
7 under Federal Rule of evidence 615. And especially because the  
8 parties have feeds into their war rooms, I want to make sure  
9 we're all on the same page that anybody who may testify, other  
10 than the parties, who would potentially be needing to discuss  
11 whether they can listen to testimony or be excluded, experts or  
12 case agents, or you tell me.

13 Are there any potential witnesses who the government  
14 anticipates would be listening to some or all of the testimony?

15 MS. COMEY: No, your Honor, certainly not before they  
16 testify. After certain victims testify, they may choose to be  
17 present after the completion of their testimony pursuant to  
18 their rights under the Crime Victims' Rights Act, but otherwise  
19 no witnesses that we know of will be listening to testimony.

20 THE COURT: OK. Ms. Menninger.

21 MS. MENNINGER: Your Honor, I would note that the  
22 government has -- and we've litigated -- whether any of the  
23 accusers' prior inconsistent statements may be admitted after  
24 their credibility has been attacked. Pursuant to the rule, if  
25 there is later introduction of inconsistent -- I'm sorry, I



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1 mean --

2 THE COURT: You mean prior consistent.

3 MS. MENNINGER: -- prior consistent -- we've got a  
4 problem at this table misspeaking -- of prior consistent  
5 statements, that the declarant be made available, subject to  
6 recross -- or recall to the stand, to explain those supposed  
7 prior consistent statements.

8 So I don't know how that bears on the Court's thinking  
9 about permitting those accusers who may be subject to recall to  
10 listen in on testimony following their release from their  
11 original testimony, your Honor.

12 THE COURT: Well, I guess the first question is, under  
13 the rule, which reads, "At a party's request, the court must  
14 order witnesses excluded so they cannot hear other witnesses'  
15 testimony" -- or I could do it on my own. But I guess the  
16 question is, is the defense -- so the government says alleged  
17 victim witnesses, after they testify, may want to listen to  
18 testimony after that. Ms. Menninger, are you requesting they  
19 not do that because of the possibility that they may be  
20 recalled for rebuttal?

21 MS. MENNINGER: Yes, your Honor.

22 MS. COMEY: Your Honor, if we may, we would ask to put  
23 in a letter on this issue, to look into it.

24 THE COURT: Yes. Fair enough. And I think you're  
25 right. There may be an intersection between the Crime Victim

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1 Protection Act and 615. Why don't you both look at it, confer,  
2 see if you can come to agreement, and if not, put in a letter.

3 MS. COMEY: Thank you, your Honor.

4 THE COURT: Thank you.

5 MR. PAGLIUCA: Your Honor, one other issue on  
6 sequestration. I was hoping to be able to provide a copy of  
7 Dr. Rocchio's testimony to either Dr. Dietz or Dr. Loftus,  
8 because I anticipate there may be issues that come up that they  
9 need to address during their testimony. And so for that  
10 purpose I would ask for a limited exclusion from Rule 615 for  
11 those witnesses.

12 MR. ROHRBACH: That's fine with the government, your  
13 Honor.

14 THE COURT: Thank you. This is why I asked. Make  
15 sure we're on the same page.

16 Anything else in that regard?

17 MS. COMEY: Not from the government, your Honor.

18 THE COURT: When may I have an order-of-witness list?

19 MS. COMEY: We would propose by Saturday, your Honor?

20 THE COURT: OK. And, as I always do, I ask at the  
21 final pretrial conference if any plea offers were communicated  
22 to the defense.

23 MS. COMEY: None were communicated, your Honor.

24 THE COURT: And Ms. Sternheim, that's accurate; none  
25 were communicated?

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1 MS. STERNHEIM: None were communicated.

2 THE COURT: Thank you.

3 What else? Anything?

4 MS. COMEY: Nothing from the government, your Honor.

5 THE COURT: Anything from the defense?

6 MS. STERNHEIM: No. Thank you.

7 THE COURT: Give me one second?

8 Yes. Just on the point, Ms. Comey, regarding the  
9 witnesses who may be recalled for rebuttal, you'll, both sides  
10 will look into it, you'll confer, and when would you like to  
11 put in a letter if there's disagreement?

12 MS. COMEY: May we submit it by Saturday, your Honor?

13 THE COURT: Yes.

14 MS. COMEY: Thank you.

15 THE COURT: All right. Nothing further?

16 Thank you, everyone. Have a good Thanksgiving. I'll  
17 see you on Monday.

18 (Adjourned)

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